Single Bench

LF 1100

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.4548 OF 2004.

PETITIONER : Shiboram Yadav, Son of Kharkhaar Ram Yadav, aged about 36 years, resident of Sheettala Para, Tahil & Post : *Chura, District : Raipur.*

VERSUS

RESPONDENTS:

1. State of Chhattisgarh through the Collector, Raipur.
2. *The Commissioner, Tribal &* Scheduled Caste Development Department, Mantralaya Raipur.
3. The Principal, Govt. Higher Secondary School, Chura, Distt: Raipur.
4. The Project Administrator, Integrated Tribal Welfare Project, Ghariyaband, District : Raipur.

P.R. No. AS 34/04
Presented by Shri Vivek Varma
dated 27/4/04

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

A.F.R

(30)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4548 of 2004

Petitioner : Shiboram Yadav

Versus

Respondents : State of Chhattisgarh through the Collector and others

Post for order on 17th November, 2006.

Sd/-
Satish K. Agnihotri
Judge
16.11.2006

(31)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4548 of 2004

Petitioner — Shiboram Yadav

Versus

Respondents — State of Chhattisgarh through the Collector and others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri P.S. Koshy, *Advocate for the petitioner.*

Shri A.S. Kachhawaha, Government Advocate for the Respondents/State.

ORDER

(17th November, 2006)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. The present petition filed under Article 226/227 of the Constitution of India challenges the validity of the impugned order dated 22.5.2004 (Annexure P/1) whereby the petitioner was removed from service with immediate effect under Rule 13 (vii) of the Department Workcharged and Contingency-paid Employees Recruitment and Conditions of Service Rules, 1975 (for short "the Rules, 1975"), for having been passed without following principles of natural justice and fair-play in action.

2. The facts of the case, in nutshell, are that the petitioner was employed as Chowkidar by the respondent No. 4 and was posted with the respondent No. 3 w.e.f. 12.5.1993 on monthly basis at collector rate as "Contingency-paid Employee". A show cause notice was issued on 1.5.2004 (Annexure P/2) asto why the petitioner be not removed from service for having committed misconduct on the ground that a sum of Rs. 4,22,908/- kept in the office, was stolen from the office. The petitioner submitted his reply (Annexure P/3) denying all the

allegations and charges levelled against him. The respondents allegedly conducted the preliminary enquiry on the basis of the reply submitted by the petitioner and passed the final order of removal of service under Rule 13 (vii) of the Rules, 1975 without affording an opportunity of hearing to the petitioner. The petitioner further made a representation dated 22.5.2004 (Annexure P/4) before the Collector, Raipur for holding the departmental enquiry before imposing the severe punishment of removal from service. The Collector, Raipur ignored completely the representation filed by the petitioner.

3. Being aggrieved, the petitioner has filed this petition impugning the order dated 22.5.2004 (Annexure P/1) and further praying that the petitioner be reinstated in service with full back wages and all consequential reliefs.

4. Shri P.S. Koshy, learned counsel appearing for the petitioner would submit that the petitioner has been penalized for the fault of the office. The said amount Rs. 4,22,908/- was not in the knowledge of the petitioner. One Shri Santosh Chourasiya, a clerk in the office of the respondent No. 3 allegedly withdrew the wages of the staff on 7.4.2004. It was alleged that Shri Santosh Chourasiya had brought the wages in his room and had placed it in the Almirah of his room, which was under his control. The alleged amount was stolen in the night of 7.4.2004. It was not verified and proved as to whether the bag wherein the alleged amount was kept was actually containing Rs. 4,22,908/-. On verification, it was found that an amount of Rs. 79000/- was still lying in the said Almirah after the alleged theft had taken place. The respondents/authorities without affording an opportunity of hearing to the petitioner, on the basis of some preliminary enquiry imposed the severe punishment of removal from service. According to learned counsel for the petitioner, this

would tantamount to violation of principles of natural justice and fair-play in action. Thus, the petition deserves to be allowed with full back wages.

5. Shri A.S. Kachhawaha, learned Government Advocate appearing for the respondents/State would submit, per contra, that the internal enquiry conduct to find out the alleged misconduct committed by the petitioner was ex parte. It is further stated clear that the petitioner was not served with the charge-sheet and further he was not afforded an opportunity of hearing enabling him to put forward his case before the authorities. It was next contended that since the impugned order was passed after considering reply of the petitioner. There was no error or irregularity in passing the impugned order.

6. I have heard learned counsel for the parties and perused the petition, return and documents appended to the petition as also to the return. It is admitted position that no departmental enquiry was held and no opportunity of hearing was afforded to the petitioner. The impugned order was passed on the basis of the reply submitted by the petitioner.

7. Rules, 1975 are framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, which governs service conditions of Contingency-paid Employees. The petitioner was Contingency-paid Employee. The respondents/authorities have invoked jurisdiction to remove the petitioner under Rule 13 (vii) of the Rules 1975. The Rule 14 of the Rules 1975 provides for procedure for imposing penalties, which reads as under :-

> "14. Procedure for imposing penalties-(i) No order imposing any of the penalties specified in clauses (vi), (vii) and (viii) of Rule 13 shall be passed except after-

(i) the employee is informed in writing, when possible to do so, of the proposal to take action against him and of the allegations on which it is proposed to be taken.
(ii) the employee is, as soon as possible, given an opportunity to explain his position in regard to the allegations made against him.
(iii) such explanation, if any, is taken into consideration.
Provided further that (1) no person shall be dismissed without the order of the competent authority and provided further that (2) it shall not be necessary to do so where the Head of the Department finds it necessary to remove an employee from service on the ground of security of the State.
(2) An order in writing referred to in sub-rule (1) shall take effect immediately on delivery to the employee and in the event of refusal by the employee to accept delivery of it, affixed on the notice board of the establishment on which he is borne and such affixing of the same on the notice board will deemed to have been served on him.

8. The Supreme Court in the case of **Anoop Jaiswal Vs. Government of India and another**[1] has observed in para 12, as under:-

"12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

9. The Supreme Court in the case of **Chandra Prakash Shahi Vs. State of U.P. and others**[2] has observed in para 12, as under:-

"12. Now, it is well settled that the temporary government servants or probationers are as much entitled to the protection of Article 311 (2) of the Constitution as the permanent employees despite the fact that temporary government servants have no right

to hold the post and their services are liable to be terminated at any time by giving them a month's notice without assigning any reason either in terms of the contract of service or under the relevant statutory rules regulating the terms and conditions of such service. The courts can, therefore, lift the veil of an innocuously-worded order to look at the real face of the order and to find out whether it is an innocent as worded. (See: Parshotam Lal Dhingra v. Union of India.) It was explained in this decision that inefficiency, negligence or misconduct may have been the factors for inducing the Government to terminate the services of a temporary employee under the terms of the contract or under the statutory Service Rules regulating the terms and conditions of service which, to put it differently, may have been the motive for terminating the services but the motive by itself does not make the order punitive unless the order was "founded" on those factors or other disqualifications."

10. The Supreme Court in the case of **Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and another**[3] has observed in para 21, as under:-

"21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

11. The Supreme Court in the case of **State of Punjab and others Vs. Balbir Singh**[4] has observed in para 7, as under:-

"7. Thus the principle that in order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the "object of the enquiry". If an enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee

and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. This principle was laid down by Shah, J. (as he then was) as early as 1961 in the case of State of Orissa v. Ram Narayan Das[7]. It was held that one should look into "object or purpose of the enquiry" and not merely hold the termination to be punitive merely because of an antecedent enquiry. Whether it (order of termination) amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry....."

12. The The Supreme Court in the case of **State of Punjab and others Vs. Sukhwinder Singh**[5] has observed in para 19, as under:-

"19. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact-finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment....."

13. The impugned order is punitive in nature and the impugned order has been passed in violation of Article 311(2) of the Constitution of India and further violation of the principles of natural justice and fair play in action.

14. In the facts of the case when the service of the petitioner has been removed without holding proper formal enquiry to find out guilt of the petitioner. It was not established that the petitioner was involved in the alleged theft in any manner. Thus, the order of removal of the petitioner from service without holding a formal enquiry and without affording him opportunity of hearing negates the principles of natural justice and fair-play in action.

15. For the reasons and analysis hereinabove, the impugned order dated 22.5.2004 (Annexure P/1) is quashed. On the question of grant of back wages, no foundation has been laid down with regard to the gainful employment of the petitioner. Since the petitioner has been restrained from working and earning his livelihood, the petitioner is entitled to grant of 40% back wages which would subserve the interest of justice.

16. For the reasons stated-above and dicta laid down in various cases, cited above, the petition is allowed with 40% back wages. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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[1] (1984) 2 SCC 369}
[2] (2000) 5 SCC 152}
[3] (2002) 1 SCC 520}
[4] (2004) 11 SCC 743}
[illegible] 569}